

United States 10
Circuit Court of Appeals
For the Ninth Circuit.

JOHN THOMAS COLE and OMEGA TRICE
COLE,

Appellants,

vs.

HOME OWNERS' LOAN CORPORATION, a
Corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Eastern District of Washington,
Northern Division

FILED

OCT - 1 1941

PAUL P. O'BRIEN
Clerk

United States
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{Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**NAMES AND ADDRESSES OF
ATTORNEYS OF RECORD**

CARL B. LUCKERATH,
1173 Dexter Horton Building,
Seattle, Washington
Attorney for Farm Debtors

PATTERSON & PATTERSON,
1921-1925 Smith Tower,
Seattle, Washington

RUSSELL F. STARK,
448 Dexter Horton Building,
Seattle, Washington
Attorneys for Home Owners' Loan Corporation

D. C. 117

BANKRUPTCY DOCKET

TITLE OF CASE	CASH RECEIVED AND DISBURSED				
	1939 Date	Received	Disbursed	Received	Disbursed
Cause No. B-7900					
In the Matter of JOHN THOMAS COLE and OMEGA TRICE COLE, Farm Debtors—Bankrupts	Dec. 2 " 30	A. N. Corbin Trans. Vou. #2	10.00	10.00	10.00
(Proceedings filed under Section 75)	1941				
P. O. Address: East Wenatchee, Douglas County, Wash.	May 23 Jun 30	Carl B. Luckerath Tr 4	5.00	5.00	5.00
ATTORNEYS					
Conciliation Commissioner :	A. N. Corbin, Wenatchee, Wash.				
—Referee		for Farm Debtors—Bankrupts			
	Carl B. Luckerath, 1308 Northern Life Tower, Seattle				
	for Appellants to CCA (Farm Debtors—Bankrupts)				
JOHN MCKAY, Waterville, Wash.		Russell F. Stark and Tom S. Patterson, 448 Dexter-Horton Bldg., Seattle			
Trustee—		for Home Owners' Loan Corporation, Creditor			

PROCEEDINGS

DATE	
1939	
Dec. 2	Petition for Composition or Extension under Sec. 75
" 2	Clerk's Order Approving Petition as properly filed
" 2	Clerk's Order of Reference to Conciliation Commissioner
1940	
Mar. 5	Report of Conciliation Commissioner (No Composition)
9	Order Approving Report of Conciliation Commissioner and Terminating Proceedings before him GOB-13-609
" 9	Pay Voucher CC certified, approved, and forwarded to Dept.
" 9	Amended Petition under Section 75s
" 9	Adjudication in Bankruptcy
" 9	Reference to John McKay, Referee
" 28	Petition to Set Aside Exemptions
" 28	Order of CC appointing Appraisers (Dated 3/12/40)
" 28	Inventory and Appraisement
" 28	Order of CC Setting Aside Exemptions (Dated 3/13/40) and fixing Rents
" 28	Petition of Farm Debtors to Borrow Money for Farm Operations, 1940
" 28	Order of CC Authorizing Farm Debtors to Borrow Money for Farm Operations during year 1940 and to Secure same by Mortgage on Growing Crops

12/2/39 10.00

DATE PROCEEDINGS

1940	Apr. 26	Petition of Farm Debtors to Borrow Money for Farm Operations, 1940
	" 26	Order of Referee Authorizing Farm Debtors to Borrow Money (2100.00 Additional)
July	8	Petition HOLC for review of all orders entered by CC, for Order authorizing sale of R. E., appointing Trustee, etc.
July	24	Affidavit of Service of Petition for Review on John Thomas Cole
"	24	Affidavit of Service of Petition for Review on Omega Trice Cole
"	29	Demurrer to Petition for Review of HOLC filed by FD
Apr.	13	Order of Conciliation Commissioner approving Appraisal
"	28	Stipulation HOLC and Bkpts. "above captioned matter" to be heard in Seattle at such time as assigned
Oct.	7	Notice to Produce Original letter McKay to HOLC
"	7	Answer Farm Debtor to Petition for Review of HOLC
"	7	Præcipe for Subpoena to Witness, Douglas, et al, for F.D.s
"	7	Hearing before Judge Black at Seattle (Petr's Exs 1 to 5)
"	8	Copy of Minutes of Hearing in Seattle Oct. 7
"	9	Copy of Minutes of Hearing in Seattle Oct. 8—Advisement

*Page numbering appearing at foot of page of original certified
Transcript of Record.

Feb. 7 Order that all matters hereafter presented shall be presented to and determined by the Hon. Lloyd L. Black GOB-13-833

" 26 Opinion of Hon. Lloyd L. Black (Order in conformity therewith to be presented after notice)

Apr. 7 Petition of Debtors for authority to borrow money and to execute notes and mortgage as security therefor

" 7 Order of Referee authorizing loan and execution of notes and mortgage (Frank B. Malloy, Referee under Sec. 75s)

" 17 Notice of Presentment of Order (HOLC) at Seattle 4/14, 9 o'el

" 17 Objections and Exceptions of FD to proposed order

" 17 Proposed Order on Petition of HOLC (unsigned)

" 17 Minutes of Hearing on Petition of HOLC, Seattle, 4/16, 9 o'el GOB-13-904

" 17 Order on Petition of HOLC signed

May 20 Substitution of Attorneys for Debtors, Carl B. Luckerath for A. N. Corbin

" 20 Notice of Presentment and Request for Special Hearing on Petitioner's motion for order vacating and setting aside or modifying order entered 4/16/41

" 20 Affidavit of Carl B. Luckerath in support of Request for Special Hearing

" 20 Motion FD for Order vacating and setting aside or modifying Order and Decree of 4/16/41

DATE	PROCEEDINGS
1941	
May 20	Affidavit FD, John Thomas Cole, re impossibility to make timely motion for new trial
" 20	Affidavit of A. N. Corbin, former attorney for FD re his proceedings concerning order of 4/16/41, etc.
" 23	Stipulation re filing of notice of appeal, etc., with Clk. U. S. Dist. Ct., West. Dist. of Wash.
" 23	Notice of Appeal by Farm Debtor to CCA
June 16	Bond for Costs on Appeal—Personal Surety \$250.00 to HOLC
" 25	Motion FD for Extension of Time of filing for docketing Record on Appeal to CCA
" 25	Order Extending Time to and including 8/1/41
	GOB-13-989
	Forwarded to next page (3)
	[2]
July 18	Statement of Points on Appeal (FD Petitioners)
" 18	Designation of Record to be included in transcript
" 25	Petition HOLC for immediate sale of Property as provided in Order 4/16/41 (filed 4/17/41)
	[3]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division

In Bankruptcy

No. B-7900

In the Matter of

JOHN THOMAS COLE and
OMEGA TRICE COLE,

Farm Debtors

ORDER APPROVING REPORT OF CONCILIA-
TION COMMISSIONER AND TERMINAT-
ING PROCEEDINGS BEFORE HIM.

This matter coming on for hearing upon the report of the Conciliation Commissioner, which report shows that the above mentioned debtors have failed in effecting an extension with their creditors, as more fully appears from said report of the Conciliation Commissioner on file herein, and the Court being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed, that the report of the Conciliation Commissioner herein be, and the same is hereby, in all respects approved, and the proceedings before the Conciliation Commissioner terminated.

Dated this 9th day of March, 1940.

LLOYD L. BLACK

District Judge

[Endorsed]: Filed Mar. 9, 1940. [4]

AMENDED DEBTOR'S PETITION

(B-7900—5:00 P. M.)

In Proceedings Under Section 75 Sub-Section S
of the Bankruptcy ActTo the Honorable Judge of the District Court of
the United States for the Northern Division,
Eastern District of Washington:

The Petition of John Thomas Cole and Omega
Trice Cole of East Wenatchee, in the County of
Douglas and District and State of Washington
(Occupation, Trade, or Business of) Farmers Re-
spectfully Represents: That he & she is personally
bona fide engaged primarily in farming operations
as follows:

That they own and operate an orchard on the fol-
lowing described land in Douglas County, Wash-
ington:

Lot Three (3), Block Two (2), Eden Orchard
Tracts, according to the plat thereof recorded
in Volume B of plats, page 10, records of said
County, Situate in the County of Douglas, State
of Washington.

That such farming operations occur in the county
(or counties) of Douglas, within said judicial dis-
trict; that they are insolvent (or unable to meet
their debts as they mature); that they have filed a
petition (official form No. 65) under Section 75 of
the acts of Congress relating to bankruptcy;

1*—that they have failed to obtain the acceptance of a majority in number and amount of all creditors whose claims were effected by a composition and/or extension proposal; and that they desire to obtain the benefit of Section 75 Sub-section S of the acts of Congress relating to Bankruptcy.

2*—[Not filled in]

That the schedule hereto annexed, marked "A", and verified by your petitioner's oath contains a full and true statement of all his debts, and (so far it is possible to ascertain) the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B", and verified by your petitioner's oath, contains an accurate inventory of all their property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore Your Petitioners Pray, That they may be adjudged by the court to be *a* bankrupts in accordance with acts relating to Bankruptcy and all acts amendatory thereof, and that appraisers may be appointed to appraise all their property real and personal.

JOHN THOMAS COLE

OMEGA TRICE COLE

Petitioners

A. N. CORBIN

Attorney for Petitioner

Coupeville, Washington

United States of America,
Eastern District of Washington—ss.

I, John Thomas Cole and Omega Trice Cole, the Petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained there in are true according to the best of my knowledge, information and belief.

JOHN THOMAS COLE
OMEGA TRICE COLE
Petitioner

Subscribed and sworn to before me, this 23 day of February, A. D. 1940.

[Seal]

J. FRED WRIGHT

Notary Public [5]

SCHEDULE A

CREDITORS HOLDING SECURITIES

Home Owner's Loan Corporation—Seattle, Washington	\$10,649.85
M. J. Trice, Wenatchee, Washington—Chattel Mortg.	1,200.00
Fruit Growers Service Co.—Wenatchee, Washington	2,000.00
Total.....	13,849.85

JOHN THOMAS COLE
OMEGA TRICE COLE
Petitioners

United States of America,
State of Washington,
County of Douglas—ss.

We, John Thomas Cole and Omega Trice Cole, the persons who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all our debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

JOHN THOMAS COLE
OMEGA TRICE COLE
Petitioners

Subscribed and sworn to before me this 23 day of February, A. D. 1940.

[Seal] J. FRED WRIGHT
Notary Public residing at Wenatchee [6]

SCHEDULE B

Real Estate

Lot Three (3), Block Two (2), Eden Orchard Tracts, according to the plat thereof recorded in Volume B of plats, page 10, records of said County, Situate in the County of Douglas, State of Washington.

Personal Property

Household Goods

(Itemized list of furniture and personality)

Farm Equipment
(Itemized list of farm equipment)

Bunk House
(Itemized list of furniture and personal property)

Keepsakes
(Itemized list of personal articles)

JOHN THOMAS COLE
OMEGA TRICE COLE

Petitioners [7]

OATH TO SCHEDULE B

United States of America,
State of Washington,
County of Douglas—ss.

We, John Thomas Cole and Omega Trice Cole, the persons who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

JOHN THOMAS COLE
OMEGA TRICE COLE
Petitioners

Subscribed and sworn to before me this 23 day of February, A. D. 1940.

[Seal] J. FRED WRIGHT

Notary Public residing at Wenatchee.

[Endorsed]: Filed Mar. 9, 1940. [8]

[Title of District Court and Cause.]

ADJUDICATION OF BANKRUPTCY

At Spokane, in said district, on the 9th day of March, 1940.

The amended petition of John Thomas Cole and Omega Trice Cole, filed on the 9th day of March, 1940, that they be adjudged bankrupt under Section 75s the acts of Congress relating to bankruptcy, having been heard and duly considered;

It is adjudged that the said John Thomas Cole and Omega Trice Cole are bankrupt under the said act of Congress relating to bankruptcy.

LLOYD L. BLACK

District Judge.

GOB-13-606

[Endorsed]: Filed Mar. 9, 1940. [9]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Spokane, in said district, on the 9th day of March, 1940.

Whereas an amended petition was filed in this court, on the 9th day of March, 1940, by John Thomas Cole and Omega Trice Cole, of East Wenatchee, Douglas Co., Wash., bankrupts above named, praying that they be adjudged bankrupt under Section 75s of the Bankruptcy Act as Amended, of the Acts of Congress relating to bankruptcy; and

whereas the said John Thomas Cole and Omega Trice Cole were adjudged bankrupt, upon said amended petition on the 9th day of March, 1940;

It is ordered that the above entitled proceeding be, and it hereby is, referred to John McKay, Esq., at Waterville, Washington, one of the referees in bankruptcy of this court, under said Section, to take such further proceedings therein as are required and permitted by said Act, and that the said John Thomas Cole and Omega Trice Cole shall henceforth attend before the said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

LLOYD L. BLACK
District Judge.

G.O.B. 13-606

[Endorsed]: Filed March 9, 1940. [10]

[Title of District Court and Cause.]

PETITION TO SET ASIDE EXEMPTIONS
To John McKay, Conciliation Commissioner:

Comes now the above named bankrupts and petition the Court that there be set off to them their unencumbered exemptions and their unencumbered interest or equity in exemptions as prescribed by the laws of the State of Washington, said unencumbered exemptions being set out and described in Schedule

B-2, Exhibits A, B and C as shown in their debtors' petition in bankruptcy under Section 75 of the Bankruptcy Act, and also set out in the amended debtors' petition, Schedule B.

They further pray that remainder of debtors' property, to-wit:

Lot Three (3), Block Two (2), Eden Orchard Tracts, according to the plat thereof recorded in Volume B of plats, page 10, records of said County, Situate in the County of Douglas, State of Washington,

which is encumbered, but on which they have heretofore, to-wit: on the 20th day of October, 1924 filed a Declaration of Homestead under the laws of the State of Washington, shall remain in their possession under the supervision and control of the Court, subject to existing mortgages, and that the Court fix a reasonable rental to be paid semi-annually for said encumbered real estate.

That the Court make such other further orders as may be just and equitable in the premises.

JOHN THOMAS COLE

OMEGA TRICE COLE

Bankrupts

A. N. CORBIN

Attorney for Bankrupts

Address and P. O. Address:

Coupeville, Washington

[11]

United States of America,
Eastern District of Washington,
Northern Division—ss.

I, John Thomas Cole and Omega Trice Cole, the petitioners mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information and belief.

JOHN THOMAS COLE
OMEGA TRICE COLE

Subscribed and sworn to before me this 1st day of March, A. D. 1940.

[Seal] FRANK B. MALLOY
Notary Public in and for the State of Washington,
residing at Waterville

[Endorsed]: Filed Mar. 28, 1940. [12]

[Title of District Court and Cause.]

ORDER APPOINTING APPRAISERS

This matter coming on on this 12th day of March, A. D. 1940, on the amended petition and the petition for appointment of appraisers by the said bankrupts, it is ordered that D. D. Hizey, L. E. Bradbury, and H. L. Douglas be and they hereby are appointed appraisers to appraise the estate of the said bankrupts as shown by the schedules in the

petition, amended petition, and inventory on file herein.

Dated this 12th day of March, A. D. 1940.

JOHN MCKAY

Conciliation Commissioner

[Endorsed]: Filed Mar. 28, 1940. [13]

[Title of District Court and Cause.]

INVENTORY AND APPRAISEMENT

State of Washington,
County of Douglas—ss.

John Thomas Cole and Omega Trice Cole of the above entitled Estate each being first duly sworn on his and her oath, says that the within is a true Inventory of all the Estate, Real, Personal and Mixed, of said bankrupts.

JOHN THOMAS COLE
OMEGA TRICE COLE

Subscribed and sworn to before me this 12th day of March, 1940.

[Seal] FRANK B. MALLOY
Notary Public in and for the State of Washington,
residing at Waterville.

State of Washington,
County of Douglas—ss.

D. D. Hizey, L. E. Bradbury, H. L. Douglas duly appointed appraisers of the above entitled estate,

being duly sworn, each for himself says: I will honestly and impartially appraise the property of said estate, which shall be exhibited to me according to the best of my knowledge and ability.

L. E. BRADBURY

DALE D. HIZEY

H. L. DOUGLAS [14]

Subscribed and sworn to before me this 12 day of March 1940.

[Seal] J. FRED WRIGHT

Notary Public in and for the State of Washington,
residing at Waterville.

INVENTORY OF PROPERTY OF SAID BANKRUPTS

REAL ESTATE

Appraised
Value

Lot Three (3), Block Two (2), Eden Orchard Tracts,
according to the plat thereof recorded in Volume
B. of plats, page 10, records of said County, Situate
in the County of Douglas, State of Washington.

Said property is subject to a mortgage to the
Home Owner's Loan Corporation in the sum of
Eleven Thousand One Hundred Ninety-Five and
no/100 Dollars (\$11,195.00)

PERSONAL PROPERTY

Household Goods

(Itemized list of personal articles)..... 428.00

FARM EQUIPMENT

(Itemized list of farm equipment)..... 425.50

KEEP SALES

(Itemized list of personal articles).....

JOHN THOMAS COLE
OMEGA TRICE COLE
Petitioners

The real estate above mentioned above is claimed as exempt under declaration filed as stated in the original petition and claimed under sections 528, 552 and 558 Rem. Rev. Stat. All of the personal property described above is claimed as exempt under section 563 Rem. Rev. Stat. [15]

Total Appraised Valuation of Personal \$ \$
Estate

Total Appraised Valuation of Real
Estate

Total Appraised Valuation of Estate
Community Interest

We, the undersigned appraisers, do hereby certify that we have appraised the property described in the above inventory at \$853.50 for the personal property and \$1000.00 for the real estate, or a total of \$1853.50, the fair value thereof. Dated this 12 day of March, 1940.

L. E. BRADBURY
DALE D. HIZEY
H. L. DOUGLAS

Appraisers

[Endorsed]: Filed Mar. 28, 1940. [16]

[Title of District Court and Cause.]

ORDER SETTING ASIDE EXEMPTIONS

Now on this 13 day of March A. D. 1940, this matter came on for hearing on the farm debtors petition for an order setting aside to them their exemptions, and the court being advised in the law and the premises is hereby ordered that there be and hereby is set aside to said farm debtors the following unencumbered personal property which is claimed as exempt in the original petition in bankruptcy, and also under the amended petition on file in said cause, all of said property being claimed as exempt under the exemption laws of the State of Washington under the different subdivisions of Section 563, Remington's Revised Statutes, and also in accordance with Sections 75 of the Laws of the United States, Chapter 8, Provisions for the Relief of Debtors, and the different subdivisions thereof, to-wit:

Personal Property

Household Goods

(Articles listed under this heading are in Amended Debtor's Petition under Section 75 Sub-section S of the Bankruptcy Act.)

Farm Equipment

(Articles listed under this heading are in Amended Debtor's Petition under Section 75 Sub-section S of the Bankruptcy Act.) [17]

Bunk House

(Articles listed under this heading are in Amended Debtor's Petition under Section 75 Sub-section S of the Bankruptcy Act.)

Keepsakes

(Articles listed under this heading are in Amended Debtor's Petition under Section 75 Sub-section S of the Bankruptcy Act.)

And it is further ordered that the said farm debtors are the owners of:

Lot Three (3), Block Two (2), Eden Orchard Tracts, according to the plat thereof recorded in Volume B of plats, page 10, records of said County, Situate in the County of Douglas, State of Washington.

and that on or about October 20, 1924, the said farm debtors filed a Declaration of Homestead on said property; same being recorded in Volume 73, page 161, File No. 74011, under Sections 528, 530, 552, and 558 Remington's Revised Statutes, claiming said property as a homestead subject to encumbrances as shown in the petition and amended petition; be and the same is hereby set aside to said farm debtors, and that they shall have the possession of the same under the supervision and control of the court. That the property remain in the possession of said debtors subject to existing mortgages, liens, pledges, and encumbrances. That such mortgages and encumbrances shall remain in full force and effect.

It is further ordered that all judicial or official proceedings in any court or under the direction of any official against the debtors or any of their property shall be stayed for a period of three years, during which time the debtors shall be permitted to retain possession of all or any part of said property in the custody and under the supervision and control of the court provided that a reasonable rental shall be paid semi-annually for that part of the encumbered property of which the debtors [18] retain possession, and that the first payment of rental shall be made within one year from the date of this order, and shall be the usual and customary rental for such property, which rental is hereby fixed at the rate of 115.00 dollars per year.

Done in open court this 13 day of March, A. D. 1940.

JOHN McKAY

Conciliation Commissioner

[Endorsed]: Filed Mar. 28, 1940. [19]

[Title of District Court and Cause.]

PETITION

Petition of the Home Owners' Loan Corporation, a corporation, respectfully states:

I.

That it is a Corporation duly incorporated pursuant to the provisions of the Home Owners' Loan

Act of 1933 and amendments. That on or about the 16th. day of February, 1934, the above named bankrupts applied to it for a loan pursuant to the provisions of said Home Owners' Loan Act and in support of his application for such loan stated and alleged that he was then the owner of the following described real estate:

Lot 3 of Block 2 of Eden Orchard Tracts according to the plat recorded in the office of the County Auditor of Douglas County, State of Washington,

subject to the following encumbrances: Mortgage to the estate of Anton Paukowich in the sum of \$5000.00 and mortgage to Fruit Growers' Service Company in the sum of \$8,500.00. That said encumbrances were either being foreclosed or were about to be foreclosed and that the said bankrupt was unable to refinance said liens from other sources and that unless a loan was made to the said bankrupt by petitioner, the liens on the above described real estate would be foreclosed and said real estate wholly lost to said bankrupt. [20]

II.

That thereupon petitioner caused said application to be processed in accordance with the law and the regulations of petitioner and caused the said above described real estate to be appraised in the manner provided by its regulations and rules, and the same was thereupon appraised as of the value of \$14,000.00 and that thereupon the petitioner advanced

the same of \$11,195.00 for the purpose of refunding the existing liens on the above described real estate and received as security for such advances a mortgage upon said above described real estate, a true copy of which is hereto attached, marked "Exhibit A" and made a part hereof. That said mortgage was duly acknowledged and duly recorded in the manner provided by law and at all times has been and now is a first lien upon the above described real estate, subject only to taxes and assessments thereon entitled to priority by the laws of the State of Washington.

III.

That no payments have ever been voluntarily made by the above named bankrupt upon said mortgage. That, however, in 1936, bankrupt applied to petitioner for an extension of time to January 1, 1937, in which to pay certain installments of said mortgage which were then past due, which request was granted and in consideration thereof gave to the petitioner a chattel mortgage on the 1936 crop of apples to be grown upon said above described real estate, and that as a result of said mortgage the petitioner received from the sale of the mortgaged crop on January 19, 1937, the sum of \$2,416.07 and on March 9, 1937 the additional sum of \$1,083.93, which sums were applied toward payment of the above [21] mentioned note and mortgage, and that in addition the petitioner has credited on said above mentioned note and mortgage on September 13, 1934 a refund of \$81.92 and on May 16, 1938, a refund

of \$2.07. That since the execution and delivery of said above mentioned mortgage and note the above named bankrupt has paid no taxes upon the above described real estate and has failed to procure fire insurance upon the buildings located on the mortgaged property, and that, accordingly, it became necessary for the petitioner to expend on the 25th day of September, 1937, the sum of \$134.61 in procuring fire insurance and further to pay taxes upon the above described real estate at the following times and in the following amounts: On November 15, 1937 the sum of \$47.82; on the 21st day of March, 1938 the sum of \$575.25, and on the 28th day of February, 1940 the sum of \$29.13. That the above sums constituted the payment of all taxes due on the above mortgage since the date of its inception. That in addition thereto, petitioner has paid all taxes on the property involved since the year 1930 in an approximate amount, excluding the hereinabove mentioned sums, \$732.69. That in addition to the above, petitioner has paid all the water assessments from the year 1931 to date in an approximate amount of \$475.00. That in addition to the above amounts, petitioner was obliged to advance and did advance during the year 1936 the sum of \$603.72 for the care and maintenance of the orchard which is located on the mortgaged premises.

IV.

That petitioner is informed and believes and on information and belief alleges the fact to be that the

above named bankrupt purchased the above described real [22] estate on the 7th day of June, 1922, and incurred the obligations hereinbefore referred to in Paragraph #1. That prior to the 24th day of May, 1934, the bankrupt was unable to meet his obligation under the terms of the mortgage to the hereinabove mentioned estate of Anton Paukowich and as a result the said mortgage was foreclosed and a judgment rendered in favor of the said mortgagee on the 24th day of May, 1934. That execution under said judgment was issued and resulted in a sale by the Sheriff of Douglas County on the 30th day of June, 1934. That at said sale the mortgagee bid in the subject property for the sum of \$6,964.26. That petitioner at the time of the refunding which has been hereinabove mentioned, purchased the certificate of sale issued to said mortgagee from the said mortgagee at its full value. That in addition to the above, petitioner also refunded the mortgage of the Fruit Growers' Service Company, the entire refunding taking place on or about the 18th. day of July, 1934.

V.

That on or about the 13th day of October, 1939, the mortgage of petitioner on the above described real estate being then in default petitioner commenced an action in the Superior Court of Douglas County, Washington for the foreclosure of its above mentioned mortgage, and that the complaint in said action was duly filed in said court on the 13th day

of October, 1939, and that thereupon summons in said action to foreclose said mortgage was duly served upon all necessary and proper parties therein, service thereof being completed on the 27th day of October, 1939 and that upon said date the said Superior Court of Douglas County had full and Complete jurisdiction in [23] said foreclosure suit then pending before it.

VI.

That petitioner is informed and believes and on information and belief alleges the fact to be that on or about the 20th day of June, 1939, the above named bankrupt filed a voluntary petition for adjudication as a bankrupt in the District Court of the United States for the Eastern District of Washington (said petition and proceeding being a different petition and proceeding than that now pending before the above entitled court, the pending proceeding being Cause No. B-7900, records of the above entitled court, and the prior petition being Cause No. B-7832 of the records of the above entitled court), and that thereafter the above described real estate was in said proceeding No. B-7832 set aside to the above named bankrupt as exempt and subsequently on or about the 1st day of August, 1939 upon the petition of the above named bankrupt, granted on the 22nd day of September, 1939, the said above named bankrupts were discharged in bankruptcy.

VII.

That on or about the 2nd day of December, 1939 the above named bankrupt filed in the above entitled court, to-wit, the District Court of the United States for the Eastern District of Washington, Northern Division, their petition for a composition and extension of time under Section 75 of the Bankruptcy Act and that simultaneously therewith filed an offer to compromise the indebtedness then owing petitioner secured by a first mortgage upon the above described real estate, upon which there was then owing the sum of \$11,964.55, by payment to petitioner of the sum of \$880.00, and that said offer to compromise was rejected [24] by petitioner. Thereupon on or about the 9th. day of March, 1940 the above bankrupt filed in the above entitled court an amended petition praying that he be adjudged a bankrupt and have the benefits of Section 75(s) of the Bankruptcy Act. See Section 203(s) U. S. C. A. Thereupon the court entered an order to the effect that said petition was duly and timely filed and referred the matter to the Honorable John McKay, Conciliation Commissioner for Douglas County, Washington in said above mentioned district and division.

VIII.

That thereupon the said Conciliation Commissioner acting ex parte and without notice to petitioner, entered the following orders in said proceedings, to-wit: 1. Order staying all proceedings in any Court against the bankrupt or his property

for a period of three years. 2. An order appointing appraisers. 3. An order directing that during the above mentioned three year period the debtor shall be permitted to retain possession of all of his property under the supervision and control of the court. That subsequently without notice to petitioner or an opportunity to be heard the appraisers appointed by the said Conciliation Commissioner filed their report with the Commissioner wherein they appraised the above described real estate at the sum of \$1,000.00 and fixed the annual rental at \$115.00, and that thereupon on or about the 12th day of March, 1940, the above named Conciliation Commissioner ex parte and without notice to petitioner or an opportunity to be heard approved the report of said appraisers and fixed the value of the above described real estate at the sum of \$1,000.00 and the annual rental therefor at the sum of \$115.00, the same to be paid annually, i.e. one year from the date of said order. [25]

IX.

That petitioner is informed and believes and on information and belief alleges the fact to be that the present fair cash value of said mortgage and premises is in excess of the sum of \$5250.00. That said above described real estate is improved by a dwelling house estimated by petitioner to have cost new \$7,000.00 and believed and alleged to have been erected during the year 1927, which said dwelling house is in a fair state of repair. The above described real estate comprises 8.8 acres of land which

is improved by an apple orchard capable of yielding under normal conditions an apple crop of approximately 8,000 boxes per year.

X.

(Paragraph pertaining solely to entry of Order authorizing 1940 crop loan, which is not in issue on this appeal.)

XI.

That petitioner has reason to believe and does believe and on information and belief alleges the fact to be that there is no reasonable possibility of the above named bankrupt being able to rehabilitate himself and that the effect of allowing the bankrupt to retain possession of the above described real estate for a period of three years will be to cause great and irreparable loss to petitioner and will not on the contrary result in the rehabilitation of the bankrupt. That petitioner has reason to believe and does believe that if petitioner is allowed to proceed with its foreclosure suit and acquire title to said above described real estate that petitioner will be able to sell the same to others for not less than \$5,000.00. [26]

XII.

That the Conciliation Commissioner has heretofore appraised the household goods and personal property of the debtor at the value of \$428.00 and the farm equipment at the value of \$425.50. That petitioner has reason to believe and does believe and on information and belief alleges the fact to be that

said appraisals are excessively low and that further that a large part of the assets of the bankrupt, including but not limited to diamond rings, jewelry and silverware has not been appraised at all.

Wherefore, Petitioner prays,

First, That the court review all orders and proceedings in the above entitled cause heretofore had before the Conciliation Commissioner and enter such order or orders in said proceedings as to the honorable court may seem equitable, just and lawful.

Second, that the court enter an order authorizing the above described real estate to be sold at public auction in the manner provided by law.

Third, that the court enter an order amending the order of the Commissioner prohibiting further proceedings in the foreclosure suit heretofore brought by petitioner in the Superior Court of the State of Washington for Douglas County and permitting said suit to proceed.

Fourth, that the court enter an order appointing a trustee in the above entitled proceeding, requiring the trustee to give a bond and requiring that the proceeds of any and all loans or sales of any property of the bankrupt, including any crop grown on the above described real estate, be paid into the hands of said trustee, and that the same be disbursed by him under order of court, and that the net proceeds of any crops grown on the above described real estate remaining after paying therefrom the necessary costs of [27] production be applied toward the payment of taxes and assessments on the

above described real estate, necessary fire insurance thereon and the balance toward the mortgage of petitioner.

Fifth, that the court enter such other and further orders that may be just and equitable in the premises.

TOM S. PATTERSON

RUSSELL F. STARK

Attorneys for Petitioner

Office and Post Office Address:

448 Dexter Horton Building

Seattle, Washington

State of Washington,

County of King—ss.

A. C. Newell, being first duly sworn, on oath, deposes and says: That he is the Manager of the Washington State Agency of the Home Owners' Loan Corporation, petitioner in the above entitled action, and is duly authorized to make this verification on its behalf; that he has read the foregoing Petition for Review, knows the contents thereof and believes the same to be true.

A. C. NEWELL

Subscribed and Sworn to before me this 3rd day of July, 1940.

[Seal]

I. MOUNT

Notary Public in and for the State of Washington,
residing at Seattle [28]

EXHIBIT A

(Standard form of real estate mortgage prepared by Home Owners' Loan Corporation, executed July 18, 1934, by "J. T. Cole, also appearing of record as John Thomas Cole, and Omega Trice Cole, his wife, of the City of East Wenatchee, County of Douglas, hereinafter referred to as *the "The Mortgagor"* and Home Owners Loan Corporation, a corporation organized under and by virtue of the authority granted in H. R. 5240, designated as the "Home Owners' Loan Act of 1933", approved June 13, 1933, the Mortgagee, hereinafter referred to as "The Mortgagee", mortgaging the following described real property situate in the County of Douglas, State of Washington, to-wit:

Lot three (3), Block two (2), Eden Orchard Tracts, according to the plat thereof recorded in volume B of plats, page 10, records of said county. Situate in the County of Douglas, State of Washington;

to secure payment of \$11,195.00 with interest at five per cent. per annum on the unpaid balance in payments of \$88.53 monthly from date and authorizing the holder at his option to declare all the remainder of said debt due and collectible after default of any installment for more than ninety days.)

(The testimony of Charles R. Stark in support of alleged defaults recited in paragraph III of the complaint are not challenged).

(Signed on the above date by "J. T. Cole" and "Omega Trice Cole", whose signatures are acknowledged in form required July 19, 1934 by "Sam M. Driver", Notary Public in and for the State of Washington, residing at Wenatchee.) [29]

EXHIBIT B

(Copy of Order in above cause signed and dated April 25, 1940 by John McKay, Referee, authorizing bankrupts to borrow total of \$2500.00 on 1940 crop which raises no issue on this appeal.)

[Endorsed]: Filed July 8, 1940. [30]

[Title of District Court and Cause.]

DEMURRER

Come now the above named farm debtors and demur to the Petition for Review of the Home Owners' Loan Corporation on file in the above entitled cause and for the following reasons:

1. For the reason that said Petition for Review does not state facts sufficient to entitle the petitioner to a review of the proceedings referred to therein.
2. That the said proceedings were not commenced within the time limited by law.

A. N. CORBIN

Attorney for Farm Debtors

Office and Post Office Address:

Coupeville, Washington.

[Endorsed]: Filed July 29, 1940. [31]

[Title of District Court and Cause.]

ORDER APPROVING APPRAISAL

It appearing to the court that the appraisal of the farm debtor's property by appraisers duly appointed and qualified was filed before the undersigned on the 12th day of March, 1940, and it appearing to the court that said appraisal is the fair and reasonable market value of said property, and that the same should be approved,

It Is Therefore Ordered that said appraisal be and the same hereby is approved.

Dated this 12th. day of August, A. D. 1940.

JOHN MCKAY

Conciliation Commissioner

[Endorsed]: Filed Aug. 13, 1940. [32]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated between the Home Owners' Loan Corporation by its Assistant State Counsel, Russell F. Stark, Petitioner in the above matter, and John Thomas Cole and Omega Trice Cole by A. N. Corbin, their attorney, the bankrupts in the above matter, that the petition of the petitioner Home Owners' Loan Corporation now pending in the above captioned matter may be argued before one of the honorable judges of the above entitled

court in Seattle, Washington, at such time as may be assigned.

Dated this 16 day of Aug. 1940.

HOME OWNERS' LOAN
CORPORATION

By RUSSELL F. STARK

Its Assistant State Counsel
A. N. CORBIN

Attorney for John Thomas
Cole and Omega Trice Cole,
Farm Debtors

[Endorsed]: Filed Aug. 28, 1940. [33]

[Title of District Court and Cause.]

ANSWER TO PETITION FOR REVIEW

Comes now the firm that is above named and for answer to the petition for review of the Home Owners' Loan Corporation, a corporation, states:

I.

For answer to paragraph I and II, allege that they have not sufficient knowledge and information to form a belief as to the truth of the allegations therein contained and therefore denied the same.

II.

For answer to paragraph III of said petition for review, Farm Debtors admit that an extension of

time was given and further say that they have not sufficient knowledge and information as to the rest of the paragraph to form a belief as to the truth of the allegations therein contained.

III.

For answer to paragraph IV as a whole, state that they have not sufficient knowledge to form a belief as to the truth of the allegations therein contained.

IV.

For answer to paragraph VIII, admit all of said paragraph except they deny that the conciliatory commissioner acted ex-party as to all of said proceedings and denies specifically that the commissioner of the Home Owners Loan Corporation, a corporation, did not have notice that the said property had been appraised and the amount it had been appraised for and further [34] admits that the report of the appraisal was approved by the conciliations commissioner by accepting the same and sending all the papers to the U. S. District Court of Spokane, Washington and further admits that later, with the knowledge of said commissioner's said written offer to the said court approving the said appraisal.

V.

Denies each and every allegation in paragraph IX except that there is a dwelling house on said premises and that it is located on 8 and 8/10 acres of land on which there is an apple orchard and that

under normal conditions produces a crop as stated in said petition for review.

VI.

For answer to paragraph 10 admit that an order was made by said conciliated commissioner to mortgage the crop of apples growing on said premises and that said Farm Debtors did mortgage the same and denies each and every allegation in said paragraph contained.

VII.

For answer to paragraph 11 denies each and every allegation therein contained.

Admits first sentence of paragraph twelve and denies the remainder of said paragraph. [A.N.C. 10/8/40 J.G.C. 10/8/40]

Therefore, said Farm Debtors pray:

1. That the Petition of the said Home Owners' Loan Corporation, a corporation be denied.
2. That the Farm Debtors recover their costs and disbursements, herein together with a reasonable attorneys fee to be fixed by the court.

A. N. CORBIN

Atty. for Farm Debtors

[Endorsed]: Filed Oct. 7, 1940. [35]

United States District Court
Eastern District of Washington
Northern Division
In Bankruptcy
No. B-7900

In the Matter of
JOHN THOMAS COLE and
OMEGA TRICE COLE,
Farm Debtors.

MEMORANDUM OPINION

Whatever the technical situation of this proceeding might be under the pleadings or whatever the technical authority of the Court might be if the statutes relating to this matter had been strictly followed in so far as they fix procedure, clearly the parties, by their respective courses of action, including stipulations and submission of testimony, in fact authorized this court to now fix the value of the farm lands of the farm debtors and the conditions and time for redemption at that value by the farm debtors, and to determine whether there should be a sale in the event no redemption should be had.

It was stipulated in open court at the beginning of the hearing that included in the matter to be considered the court might have before it on review such approval as the Conciliation Commissioner made of the appraisal and rental, regardless of whether the approval of the Conciliation Commissioner as to the appraisal and the rental may have been made on the 9th of March, 1940 or in August,

1940, or whether at some intervening date, and whether it was in writing or orally.

And regardless of what may have been the technical rights of the parties to introduce new evidence to supplement the record of the Conciliation Commissioner and the appraisers both sides at the hearing before this court did introduce a substantial amount [36] of oral evidence. Considerable documentary evidence was also introduced. The farm debtors prior to the hearing subpoenaed and had in attendance several witnesses who testified at considerable length as to their respective opinions in connection with the market or rental value of the property, or both. During the hearing it was stipulated that a certain appraiser of the petitioner, Home Owners' Loan Corporation, if personally present, would testify that he had been an appraiser of the petitioner since 1934, had appraised approximately forty thousand pieces of property in this state, most of which were for mortgage purposes but many with respect to sales, so applying all of his time for approximately six years; that it was the practice to sell on appraisals of such appraiser and that of two thousand properties acquired by the Home Owners' Loan Corporation between sixty and seventy-five per cent. had already been sold on such appraisals, with all of which he was familiar; that he had appraised this particular property and that its present fair and reasonable cash market value as of the time of the hearing and at the time of the appraisal by the appraisers was at least \$5,250.00.

The attorney for the farm debtors objected only as to the materiality of such testimony and as to the qualifications of the witness.

Certainly such testimony was material and the witness was qualified. The only question, of course, would be as to the weight, if any, that the court should accord to same.

The prayer of the petitioner's petition was that the court should review all orders and proceedings had before the Conciliation Commissioner and should enter such order or orders as to the Court seemed equitable, just and lawful, including among other relief prayed for, an order authorizing the real estate to be sold at public auction, and the appoint- [37] ment of a trustee.

As above mentioned, by the action of both parties preceding and during the hearing the proceeding became one for court decision upon evidence submitted and not merely for review.

The evidence submitted to the court established the following:

The real estate in question is an orchard tract of 8.8 acres in Douglas County three miles from Wenatchee. The farm debtors bought same in 1922 on a contract at a price of \$23,000.00 and thereafter certain improvements were placed thereon. Included in the improvements on the property is a modern house, besides a barn and a packing shed. The home has five rooms on the main floor in addition to such rooms as may be in the basement; it is fully modern with hardwood floors, electric and

water service, hot air heat, excellent plumbing. And it is surrounded by an especially attractive and expensive terraced rock garden and with trees and shrubbery.

Some time after the purchase in 1922 the farm debtors obtained a deed to the property and ultimately placed two mortgages thereon. By 1934 one of such mortgages had been foreclosed and the farm debtors thereupon made application to the Home Owners' Loan Corporation for a loan and such corporation paid off all of the encumbrances, including back taxes against the property. The amount advanced by the Home Owners' Loan Corporation was \$11,195.00 payable at the rate of \$88.53 per month. This amount was many thousand dollars less than the aggregate of the encumbrances which had been against the property and which in part had been retired by the Home Owners' Loan Corporation at a substantial discount. [38]

The farm debtors from 1934 paid none of such agreed monthly payments nor even the taxes or fire insurance but some amounts were received by the Home Owners' Loan Corporation through a crop mortgage, etc. The parties are in dispute as to whether this was voluntary on the part of the farm debtors or compelled.

At any rate the total amount due the Home Owners' Loan Corporation at the present time is substantially in excess of the \$11,195.00 advanced by the Home Owners' Loan Corporation in 1934 for the relief of the farm debtors.

In 1939 the farm debtors were adjudicated bankrupts in voluntary bankruptcy proceedings under the general bankruptcy laws and obtained their discharge. Subsequently these farm debtors filed a petition for relief as farm debtors under Section 75 of the Bankruptcy Act and failing to secure a composition and extension under agreement with the creditors such original proceeding was dismissed and the farm debtors filed a petition to be adjudged bankrupts under Section 75(s).

Thereafter appraisers appraised the real estate as having a fair and reasonable market value of \$1,000.00 and the Conciliation Commissioner ordered that the debtors should have possession of the real property for three years and should pay \$115.00 annually as rental. The Home Owners' Loan Corporation, feeling aggrieved, came to this court for relief, insisting, among other things, that the real property had an actual cash market value in excess of \$5,250.00. In normal years the orchard produces about eight thousand boxes of apples annually.

The farm debtor in his testimony before this court insisted under oath that the total value of the 8.8 acres, including orchard and all improvements, was \$880.00 and that [39] such was the value of the property free of all taxes and encumbrances whatsoever. His testimony, in effect, was that there was no rental value to the property at all other than taxes and water (LLB) and that he at the present time had the complete use and possession of four similar properties by merely paying the taxes and water or less and could secure additional orchards

under similar arrangements. The farm debtor further testified that he did not know and could not even estimate what the house cost, but that it was worth very little. His further testimony was that the original part of the house was very old, being an old settler's shack, that the new part was built around it about thirteen years ago as a makeshift and was in poor condition with the foundation giving way, the concrete being a poor job, with the floor not substantially built and with the roof in poor condition and leaking. No interpretation of his testimony concerning the house is possible except that the house had never been in good condition or repair or of any substantial value.

Other witnesses produced by the farm debtors indicated lack of knowledge as to the house but gave their various opinions of the value of the real estate for sale being between \$800.00 and \$2,000.00 (the higher figure being on terms) and for rent \$115.00 annually, upon the ground that the only market for sale or rent of orchard properties now or for many years past had been completely demoralized. The court believes these witnesses were in good faith but feels compelled by reason of the debtors' application of 1934 and petition of December, 1939, and other circumstances and evidence to accept the mortgagee's position as to the value of such tract. [40]

The written application for the loan signed by Mr. Cole in 1934 was to the effect that the house was then six years old, was in a good state of repair, was forty by thirty-eight feet and cost \$6,500.00;

that the barn cost \$300.00 and the packing shed \$750.00, and that the land cost \$23,000.00, or a total of \$30,550.00. From the exhibits introduced in the case undoubtedly the Howe Owners' Loan Corporation relied upon the representations of the farm debtor as to the house then being six years old, in good repair and that it cost \$6,500.00, instead of its being an ancient remodeled shack in poor repair with cost unknown. It accepted the property as representing a total investment of \$30,550.00 and of having a reasonable and fair market value in the demoralized market of 1934 of approximately \$14,000.00. And at the request of the farm debtor it advanced \$11,195.00 thereon.

Regardless of the debtor's testimony before the court the original petition signed by the farm debtor and his wife under oath on December 1, 1939 set forth that this orchard tract was subject to a mortgage for \$11,195.00 and that its value over and above encumbrances was \$2,000.00, thus making a total value of said tract of \$13,195.00 on December 1, 1939. All the evidence in the case was to the effect that there had been no change in value from long before December, 1939 to the date of hearing. It may be remarked in passing that the valuation by the farm debtors in the petition of December, 1939 was not much at variance with the \$14,000.00 valuation under which the Home Owners' Loan Corporation made its loan in 1934.

From the exhibits and testimony, including the photographs of the home and the surroundings the

court is compelled to the conclusion that a fair and reasonable market value [41] for the tract now is and at all times since these proceedings were instituted in December, 1939 has been at least \$5,250.00.

If the actual market is as demoralized as the farm debtors contend then a sale at \$880.00 or any substantial amount under \$5,250.00 would be a forced sale at a grossly unfair and unreasonably low price such as the Home Owners' Loan Act and the Farm Debtor statutes were intended to avoid.

Under the contentions and testimony of the farm debtor before the court the property not only has no real value or real rental value but there is no prospect of there being an increase in the future as to either. Under the farm debtor's testimony the property is of no use or moment to him as he not only is able to get but is actually in possession of four other properties. Under the evidence there is no possibility of rehabilitation of the debtors nor does his testimony permit inference that he expects or desires such.

If the farm debtor is in good faith in his representations of the worthlessness and uselessness of the property he should not be interested in whether it were appraised at \$880.00 or \$5,250.00. He contended that it does not and has not been producing enough for many years to even pay the taxes and water.

It is provided in Section 75 (s) that the rental shall be based upon the rental value, net income and earning capacity of the property and that "the

court, in its discretion," may, in addition to the rental, require payments on the principal due and owing by the debtor, etc.

The Court deems \$115.00 annually far below the rental value of the real estate and deems insufficient any annual rental less than \$400.00 for a property capable of producing about eight thousand boxes of apples during a normal season and with a modern

[42]

and attractive home as convenient to Wenatchee as this one. But since the debtors evidenced lack of interest in paying more than merely enough to cover taxes and water charges it does not appear necessary to the disposition of the property to fix the proper rental.

As provided in Section 75 (s) and pursuant to the decision of James M. Wright, petitioner, vs. The Union Central Life Insurance Company, et al., United States Supreme Court, decided in December, 1940, the farm debtors shall have an opportunity to redeem such property at the value of \$5,250.00 fixed by the Court until the first day of May, 1941, and thereafter the court, at the petition of the mortgagee, will appoint a trustee and an immediate sale of the property will be had at public auction, under the provision that the mortgagee shall not be permitted to bid more than \$5,250.00 for said property and that the farm debtors shall have ninety days after such sale to redeem therefrom.

So long as the farm debtors properly care for said property and the orchard and improvements thereon and properly irrigate and spray the orchard

and pay therefor, they shall, until May 1, 1941, be entitled to the possession of said property and if they fail to redeem by said time shall, if immediate sale be ordered, continue to have such right so long as they comply with such requirement until the sale and until the ninety days for redemption thereafter has expired. However, the mortgagee, in order to protect its lien, shall also have the right at all such times to go upon said property (other than in the home while occupied by the farm debtors) and at its expense spray and irrigate same as may be reasonably necessary to preserve and protect the orchard and protect the value of said property. If sale is not had, as above, then the debtors shall [43] be required also to pay a proper rental to continue its possession.

The Court has very sincere sympathy for distressed farmers and those seeking an opportunity for rehabilitation under the provisions of Section 75 and 75 (s) and recognizes that under the law such farm debtors are usually entitled to possession of property for three years before a sale is had. But the provisions of this Act certainly under the facts here disclosed are not intended to totally destroy the loan of a party which in good faith came to the farm debtors' rescue upon his written representations which he later under oath attempts to show were false.

What the debtor seeks would destroy the loan and yet, if the debtor is in good faith, would benefit

the debtor not at all. The decision which the lender seeks will salvage less than half of the lender's loss and under the debtor's claim hurt the debtors not one whit.

The court is convinced that the debtor in fact does believe that the property is worth much in excess of \$5,250.00, and that his testimony that it was worth but \$880.00 was with the purpose of having that fixed as the value so that he, upon payment thereof, could secure the property at that unreasonably low price and thereby wipe out the \$11,195.00 encumbrance of the Home Owners' Loan Corporation created when it sought, at his request, to be the debtors' benefactor.

Order in conformity herewith is to be presented after notice.

Dated this 25th day of February, 1941.

LLOYD L. BLACK

United States District Judge.

[Endorsed]: Filed Feb. 26, 1941. [44]

[Title of District Court and Cause.]

ORDER

The above entitled cause came on to be heard on the petition of the Home Owners' Loan Corporation, which is on file herein, and the petitioner appeared by its attorneys of record, Mr. Tom S. Patterson and Mr. Russell F. Stark, and the Farm

Debtors, to-wit, John Thomas Cole and Omega Trice Cole, appeared in person and by their attorney of record, Mr. A. N. Corbin, and it was stipulated in open court that the court might hear and determine the issues presented by the petition of said Home Owners' Loan Corporation, and subsequent pleadings, upon their merits and that all objections to the form of procedure were waived and that the court might hear said matter and rule thereon at Seattle, Washington (such place being more convenient for the parties) with like effect as if the court were actually sitting at Spokane in the Eastern District of Washington, and each of the parties waived any and all objections to said matter being heard by the court at Seattle, and on the contrary joined in a request that the matter be heard there, and the court heard evidence on behalf of the respective parties and argument of counsel and thereupon briefs were submitted and the court took the matter under advisement, and subsequently rendered a memorandum opinion, which is on file herein and the court being thus duly advised in the premises, it is by the court [45] hereby ordered, adjudged and decreed as follows, to-wit:

I.

That the value of Lot Three (3), Block two (2) Eden Orchard Tracts, according to the plat thereof recorded in the office of the County Auditor of Douglas County, State of Washington, is hereby fixed at the sum of fifty-two hundred fifty and

00/100 (\$5250.00) Dollars; that a reasonable annual rental for the use of said property would be not less than four hundred and 00/100 (\$400.00) Dollars, but that inasmuch as the farm debtors have evidenced lack of interest in paying more than enough to cover taxes and water charges against the property it does not appear to the court necessary to the disposition of the property to fix the annual rental.

II.

That there is no possibility of rehabilitation of the farm debtors, nor does their testimony permit the inference that they expect or desire the same.

III.

That if the farm debtors shall, on or before May 1, 1941, pay into the Registry of the Court the sum of fifty-two hundred fifty and 00/100 (\$5250.00) Dollars they shall then be entitled to have turned over to them the full possession and title to the real estate described in Paragraph I hereof, free and clear of encumbrances.

IV.

That if the farm debtors shall not, prior to May 1, 1941, pay into the Registry of the Court the sum of Fifty-Two Hundred Fifty and 00/100 (\$5250.00) Dollars for the purpose of redeeming the property as provided in the preceding paragraph hereof, an immediate sale of the property described in Paragraph I hereof shall be had thereafter at public

auction by a Trustee to be appointed by the court upon petition of the Home Owners' Loan [46] Corporation, at which sale the Home Owners' Loan Corporation shall be allowed to bid, provided its bid shall not exceed Fifty-Two Hundred Fifty and 00/100 (\$5250.00) Dollars, and the farm debtors shall have ninety (90) days after such sale to redeem therefrom, and that if redemption be not had within said period all right, title, claim, lien and interest of the farm debtors and all persons claiming by, through or under them in or to the above described real property shall terminate and end, and the Trustee shall execute the proper conveyance conveying the title to the purchaser in fee simple, free and clear of any claims of the farm debtors therein or thereto whatsoever to the purchaser and thereafter the farm debtor shall be forever barred and estopped from asserting any right, title, claim, lien or interest whatsoever in or to said above described real estate. If the Home Owners' Loan Corporation shall elect to bid at said sale it shall not be required to pay the amount of its bid in cash but same may be paid by crediting the amount of its bid upon its mortgage debt.

V.

So long as the farm debtors properly care for said property and the orchard and improvements thereon and properly irrigate and spray the orchard and pay therefor, they shall, until May 1, 1941, be entitled to the possession of said property and if

they fail to redeem by said time shall, if immediate sale be ordered, continue to have such right so long as they comply with such requirement until the sale and until the ninety (90) days for redemption thereafter has expired. However, the mortgagee, in order to protect its lien, shall also have the right at all such times to go upon said property (other than in the home while occupied by the farm debtors) and at its expense spray and irrigate same as may be reasonably necessary to preserve and protect the orchard and protect the value of said property. If sale is not had, as above, then the debtors shall be required also to pay a proper rental to continue in possession. If in the opinion of the [47] Home Owners' Loan Corporation the farm debtors shall not properly farm, care for and cultivate said property and the orchard and improvements thereon and properly irrigate and spray and cultivate the same and pay therefor, the Home Owners' Loan Corporation shall have the right to apply to this court for an order authorizing it to enter into the possession, control and management of said property (other than the house occupied by the debtors) and to such other relief in the situation that may to the court at said time seem proper.

Done in open court this 16th day of April, 1941.

LLOYD L. BLACK

Judge

Presented by:

TOM S. PATTERSON

[Endorsed]: Filed Apr. 17, 1941. [48]

[Title of District Court and Cause.]

EXCEPTIONS OF FARM DEBTOR TO ORDER OF 4/16/41

Come now the said Farm Debtors, by their Attorney, A. N. Corbin, of Coupeville, Washington, and object and except to the signing and entering of the Order prepared by Messrs. Tom S. Patterson and Russell F. Stark, attorneys for the petitioner, as follows:

First: That said order is contrary to the Laws of the United States pertaining to proceedings under the Amended Frazier Lempke Act, providing for relief for distressed Farm Debtors, under which said Farm Debtors are seeking relief.

Second: It is not supported by the preponderance of the evidence introduced. All of the three disinterested witnesses, to-wit, George A. Sellar, Harry Wycker and A. E. Yaeger placed the value about the same as the appraisers, from \$1000 to \$1200, with possible \$1200 to \$2000 with practically no down payment. Mr. Cole of course is an interested witness, but he placed the value approximately the same as the other named witnesses and at about the same sum fixed by the appraisers. His evidence is entitled to credit as he is corroborated by all the witnesses and the appraisers, excepting only the witness who counsel stated would testify that the place was worth \$5250, and that witness did not appear in court and there was no opportunity to cross examine him.

Third: Objects and excepts to all of paragraph I after the word "Dollars", in line 5 page 2 of the order, for the reason that no evidence was introduced to support that statement.

Fourth: Objects and excepts to all of paragraph "II" for the reason that there is no evidence to support that statement, and for the further reason that at the time the petition was filed and at the time of the hearing the Farm Debtors had been given no opportunity to rehabilitate themselves as provided by the laws above referred to. They had complied with the said law, had performed the orders of the court, and were not in default in any particular, and no one could say that there was no possibility of rehabilitation. That could be determined after the fruit was harvested and sold. The price of apples alone would determine that fact. Under the law they were entitled to three years to do that, unless they failed to pay the rental fixed by the appraisers, or neglected to take good care of the orchard involved in this controversy.

Fifth: Object and except to the order as a whole for the reason that the same is *contrary to* the laws of the United States and is contrary to the evidence in the case and that it absolutely nullifies the said Frazier Lempke Act (Amended).

These objections are presented in writing for the reason that said Farm Debtors are unable financially to be represented personally.

Very respectfully submitted,

A. N. CORBIN

Attorney for Farm Debtors.

[Endorsed]: Filed Apr. 17, 1941. [50]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

The undersigned, A. N. Corbin, attorney of record for the above named farm debtors, hereby withdraws as their attorney, and consents to the substitution of Carl B. Luckerath of Seattle Washington as Attorney of record for said farm debtors.

Dated this 15 day of May 1941.

A. N. CORBIN

ORDER ALLOWING SUBSTITUTION OF ATTORNEYS

On this 20th day of May, 1941, upon the foregoing consent of substitution of Attorneys being present to the court, in the above entitled matter.

It is hereby ordered that Carl B. Luckerath of Seattle Washington be substituted as Attorney of record for the Farm Debtors, John Thomas Cole, in the above entitled matter.

Dated this 20th day of May, 1941.

LLOYD L. BLACK

Judge

Presented by
CARL B. LUCKERATH

Copy received This 20 day of May 1941.

PATTERSON & PATTERSON

Atty's for Home Owners' Loan
Corporation

By D. Q.

[Endorsed]: Filed May 20, 1941. [51]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed between the undersigned respective counsel for the above named farm debtors, and for petitioner, Home Owners Loan Corporation, that notice of appeal and other pleadings pertaining to the same may be filed with the Clerk of the United States District Court for the Western District of Washington, Northern Division, in Bankruptcy, with like effect and the same as though filed with the Clerk of the United States District Court for the Eastern District of Washington, Northern Division, in Bankruptcy.

This stipulation is entered upon for the convenience and accommodation of counsel, and for the reason that the files in the above entitled cause are presently held through transfer by the said Clerk of the United States District Court for the Western District of Washington, Northern Division, in Bankruptcy.

Dated and signed this 23rd day of May, 1941.

CARL B. LUCKERATH

Attorney for Farm Debtors

RUSSELL F. STARK

Attorney for Home Owners
Loan Corporation.

[Endorsed]: Filed May 23, 1941. [52]

Calendar

Hon. Lloyd L. Black, U. S.
District Judge.

Monday, October 7th, 1940.

* * * *

[Title of District Court and Cause.]

DEMURRER OF FARM DEBTORS TO
PETITION ON REVIEW

The matter is called at 8 a. m. It is stipulated in open Court by and between counsel that this Court may hear the matter here for the convenience of both sides with the same authority as if the court were sitting in Spokane, Wash. It is also stipulated in open court that this Court may have before it on review such approval as a conciliation commissioner made of the appraisal and rental regardless of whether suit may have been made on the 9th of March 1940 or in August or at some intervening date, or whether it was in writing or orally. Russell F. Stark is sworn and testifies. Petr's Exs 1 & 2 are offered, objected to & objection overruled, said exhibits are admitted. Petrs. Exs 3 & 4 are adm., there being no objections thereto. John Thos. Cole is sworn & testifies. Petrs. Ex No. 5 is adm., there being no objection thereto. At 10 A. M. matter cont'd to 8 A. M. tomorrow.

[Endorsed]: Filed Oct. 8, 1940. [53]

Calendar

Hon. Lloyd L. Black, U. S. District Judge,

Tuesday, October 8th, 1940.

8:00 A. M.

[Title of District Court and Cause.]

Further Hearing on Demurrer of Farm Debtors to Petition on Review, cause called for further hearing, all parties present. Mr. Cole resumes the stand and further testifies. Mr. Stark is recalled to the witness stand & further testifies. At 8:30 A. M. Petitioner rests. A. E. Yeager is sworn & testifies on behalf of the Farm Debtors. For the purpose of protecting any witnesses claim, either against the Farm Debtors or against the Petitioner, as the argument may be, the Court directs the record to show that this witness attended yesterday as a witness under subpoena as well as today, the witness being from Wenatchee, Wash. Mr. Patterson objects to certain portions of the testimony of Mr. Yeager, said objection being overruled. Geo. A. Sellar is sworn & testifies on behalf of the Farm Debtors Harry E. Weicker is sworn & testifies on behalf of the Farm Debtors. At 9:35 A. M. Farm Debtors rest. The argument is to be submitted on briefs—Farm Debtors to file opening brief within eight (8) days, Petitioners to file answering brief within eight days thereafter & Farm Debtors 5 days thereafter to reply.

[Endorsed]: Filed Oct. 9, 1940. [54]

Court Room No. 2, Wednesday, April 16, 1941—
9 A. M.

Present: Hon. Lloyd L. Black, U. S. Judge, Elmo Bell, Dep. Clerk, Maloney & Holland, Bailiffs.

[Title of District Court and Cause.]

This matter comes on before the Court for the entry of an order on the hearing of the Petition of Home Owners' Loan Corp. The cause is called, statements are made by Mr. Patterson. Court directs the order proposed by Mr. Patterson and bearing the acceptance of counsel for the Farm Debtors be filed even tho it is not signed by the Court. Court further directs the exceptions of counsel for the Farm Debtors to the proposed order of the Petitioners be filed and such exceptions be noted as exceptions to the order to be presented at 2:00 P. M. today, at which time order is presented by Mr. Patterson & signed by the Court. Order and copy of this minute entry mailed to Spokane today. (E Bell).

[Endorsed]: Filed Apr. 17, 1941. [55]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above named John Thomas Cole and Omega Trice Cole, farm debtors, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order of the court en-

tered herein by the Honorable Lloyd Black April 16, 1941, and from the whole thereof.

CARL B. LUCKERATH

Attorney for Appellants John
Thomas Cole and Omega
Trice Cole, Farm Debtors.

Post Office Address:

1308 Northern Life Tower
Seattle, Washington.

[Endorsed]: Filed May 23, 1941. [56]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents, that we, John Thomas Cole and Omega Trice Cole, his wife, as principals, and Nina G. Blake as surety, are held and firmly bound unto Home Owners Loan Corporation, a corporation, in the sum of \$250.00, for the payment of which well and truly to be made we bind ourselves, our administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9 day of June, 1941.

Whereas, a certain order was entered herein on the 16th day of April, 1941, in a proceeding wherein Home Owners Loan Corporation, a corporation, was petitioner, and John Thomas Cole and Omega Trice

Cole, his wife, were respondents, and said respondents did on the 23rd day of May, 1941, file notice of appeal from said order as required by law, and

Whereas, a bond for costs on appeal in the sum of \$250.00, is required by law to be filed with the said notice,

Now Therefore, the condition of this obligation is such that if the said John Thomas Cole and Omega Trice Cole, his wife, shall pay all costs which may be awarded if the [57] said appeal is dismissed or the said order affirmed, and such costs as the Appellate Court may award if the said order is modified, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN THOMAS COLE
OMEGA TRICE COLE
NINA G. BLAKE

State of Washington,
County of Chelan—ss.

On this 9 day of June, 1941, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared John Thomas Cole and Omega Trice Cole, his wife, and Nina G. Blake to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed
the day and year in this certificate above written.

(Notarial Seal) **H. E. WIKER**

Notary Public in and for the State of Washintgon,
residing at Cashmere.

[Endorsed]: Filed June 16, 1941. [58]

[Title of District Court and Cause.]

**ORDER GRANTING MOTION FOR
EXTENSION OF TIME**

The Court being fully advised, It Is Hereby Or-
dered, Adjudged and Decreed, that the motion of
the Farm Debtors for an extension of time for
Docketing and filing record on appeal in the above
entitled matter in the United States Circuit Court
of Appeals be, and the same is hereby granted and
the time for the filing and docketing of such record
is extended to and including August 1, 1941.

Dated this 25 day of June, 1941.

L. B. SCHWELLENBACH

United States District Judge.

[Endorsed]: Filed June 25, 1941. [59]

[Title of District Court and Cause.]

DESIGNATION OF RECORD TO BE
INCLUDED IN TRANSCRIPT

To the Clerk of the United States District Court for
the Eastern District of Washington, Northern
Division:

You Are Hereby requested to prepare, certify and
transmit to the Clerk of the United States Circuit
Court of Appeals for the Ninth Circuit, with refer-
ence to a Notice of Appeal heretofore filed by the
petitioner in the above entitled action, a Transcript
of the record in the above cause, prepared and trans-
mitted as required by law and by the rules of said
Court, and to include in said Transcript of record
the following designated portions thereof, to-wit:

- (1) The docket entries of all proceedings before
the United States District Court in said Cause.
- (2) Order approving report of Conciliation
Commissioner and terminating proceedings before
him.
- (3) Amended Debtors' Petition in proceedings
under Section 75, Subsection (s), of the Bankruptcy
Act.
- (4) Adjudication of bankruptcy.
- (5) Order of General Reference.
- (6) Petition to set aside Exemption.
- (7) Order appointing appraisers.
- (8) Inventory and Appraisement.
- (9) Order setting aside exemption.
- (10) Petition (for review).

- (11) Demurrer.
- (12) Order approving appraisal. [60]
- (13) Stipulation.
- (14) Answer to Petition (for review).
- (15) Written Memorandum Opinion of District Court.
- (16) Order of April 16, 1941.
- (17) Exceptions of Farm Debtors, by their attorney, A. N. Corbin, to entry of said Order, filed April 16, 1941.
- (18) Substitution of attorneys.
- (19) Stipulation of May 23, 1941.
- (20) Minute Entries on hearing of October 7th and 8th, 1940.
- (21) Minute Entries on April 16, 1941, granting exceptions to entry of order.
- (22) Notice of Appeal.
- (23) Bond for Costs on appeal.
- (24) Order granting motion for extension of time.
- (25) This Designation of the record on appeal.
- (26) Statement of points on appeal.

CARL B. LUCKERATH

Counsel for Petitioners

1208-1316 Northern Life Tower,
Seattle, Washington.

Copy Received This 17 day of July, 1941.

PATTERSON & PATTERSON

Atty's for Home Owners'
Loan Corporation.

[Endorsed]: Filed July 18, 1941. [61]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Come now John Thomas Cole and Omega Trice Cole, Farm Debtors and Petitioners in the above entitled cause, and present the following Statement of Points upon which they intend to rely upon their appeal from the decision of the United States District Court, made, and entered April 16, 1941, to-wit:

(1) Error in overruling petitioner's Demurrer to respondent's Petition (for review).

(2) That said order is contrary to the laws of the United States pertaining to pleadings under the Amended Frazier-Lempke Act (11 U. S. C. A., Sec. 203; Act of June 22, 1938, Chapter 575 (75 a to s, 52 Stat. 840), providing for relief of distressed farm debtors, and under which petitioners are seeking relief.

(3) Failure of said order to fix an appraised value and a rental value in the manner prescribed by the said Amended Frazier-Lempke Act, and in failing to confirm petitioner's right to occupation and possession of the farm property involved for a period of three years, free from legal steps of ouster or dispossession, contingent on performance of and compliance with the order of the court with respect to rental and manner of occupation.

(4) That the recitals in said order of a valuation of \$5,250.00 is contrary to all the evidence [62] received, supported by no testimony whatever, as shown by the record of the trial and the opinion of the Court.

(5) That there is no evidence which was introduced to support the statement contained in that portion of Paragraph I of said Order, following the word "Dollars", in line 5, page 2, being Paragraph numbered I of said Order.

(6) That there is no support by evidence or testimony for the recital of Paragraph II of said Order.

CARL B. LUCKERATH
Counsel for Petitioners.

1308-1316 Northern Life Tower,
Seattle, Washington.

Copy Received This 17 day of July, 1941.

PATTERSON & PATTERSON
Atty's for Home Owners'
Loan Corporation.

[Endorsed]: Filed July 18, 1941. [63]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF THE UNITED
STATES DISTRICT COURT TO TRAN-
SCRIPT OF RECORD.

United States of America,
Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify the foregoing typewritten pages, numbered from 1 to 63 inclusive, to be a full,

true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by the Designation of Record on Appeal of the appellant, as the same remains on file and of record in my office, and that the same constitutes the record on appeal from the order dated April 16, 1941 of the United States District Court for the Eastern District of Washington to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, at San Francisco, California.

I further certify that the fees of the Clerk of this court for preparing and certifying the foregoing record amount to the sum of \$10.15 and that the same has been paid in full by Mr. Carl B. Luckerath, Attorney for said Farm Debtor Appellants.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, at Spokane in said District, this 30th day of July, A. D. 1941.

(Seal)

A. A. LaFRAMBOISE

Clerk of said District Court.

[64]

[Endorsed]: No. 9881. United States Circuit Court of Appeals for the Ninth Circuit. John Thomas Cole and Omega Trice Cole, Appellants, vs. Home Owners' Loan Corporation, a Corporation, Appellee. Transcript of Record. Upon Appeal

from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed July 31, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 9881

In the Matter of

JOHN THOMAS COLE and OMEGA TRICE
COLE, et ux

Farm Debtors and Appellants.

vs.

HOME OWNERS' LOAN CORPORATION,
Respondents.

STATEMENTS OF POINTS ON APPEAL
DIRECTION TO PRINT RECORD

Comes now, John Thomas Cole and Omega Trice Cole Farm Debtors and Petitioners in the above entitled cause, and present the following Statement of Points upon which they intend to rely upon their appeal from the decision of the United States District Court, made, and entered April 16, 1941 to-wit;

(1) Error in overruling petitioners' Demurrer to respondent's petition (for review).

(2) That said order is contrary to the laws of the United States pertaining to pleadings under the Amended Frazier-Lempke Act (11 U. S. C. A., Sec. 203; Act of June 22, 1938, Chapter 575 (75 a to s, 52 Stat. 840), providing for the relief of distressed farm debtors, and under which petitioners are seeking relief.

(3) Failure of said order to fix an appraised value and a rental value in the manner prescribed by the said Amended Frazier-Lempke Act, and in failing to confirm petitioners' right to occupation and possession of the farm property involved for a period of three (3) years, free from legal steps of ouster or dispossession, contingent on performance of and compliance with the order of the court with respect to rental and manner of occupation.

(4) That the recitals in said order of a valuation of \$5,250.00 is contrary to all the evidence received, supported by no testimony whatever, as shown by the record of the trial and the opinion of the Court.

(5) That there is no evidence which was introduced to support the statement contained in that portion of Paragraph I of said Order, following the word "Dollars", in line 5, page 2, being Paragraph I of said Order.

(6) That there is no support by evidence or testimony for the recital of Paragraph II of said order.

Further, the Appellants designate the entire record as heretofore filed, as necessary for consideration of the points on appeal, to-wit;

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CARL B. LUCKERATH
Counsel for Petitioners

Copy Received This 19 day of Aug. 1941.

PATTERSON & PATTERSON
Atty's for Defendant.

[Endorsed]: Filed Aug. 20, 1941. Paul P.
O'Brien, Clerk.